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CRIMINAL APPEAL NO. 115 OF 1993 168/2003

APPELLANT	Churanmani, aged about 25 years, S/o Ramsahay, resident of village-Chilfi, Police Station-Pandariya, District- Bilaspur (M.P.) (Now C.G.)

Versus

RESPONDENT	State of Madhya Pradesh (now State of Chhattisgarh)

POST FOR JUDGMENT ON 1 February, 2003.

Sd/-
L.C.BHADOO
Judge

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Versus

RESPONDENT	State of Madhya Pradesh (now State of Chhattisgarh)

Appellant by Shri M.L.Postore, Advocate.

State by Miss Sharmila Singhai, Deputy Govt. Advocate.

JUDGMENT

By Justice L. C. Bhadoo.

1. At the out set learned counsel for the accused submitted that inadvertently the present petition against the conviction of the petitioner Churamani has been filed as 'Criminal Revision' whereas it should have been a 'Criminal Appeal' against the judgment dated 11th February, 1993 passed by the learned Fourth Additional Sessions Judge, Bilaspur (Link Court Mungeli) in Sessions Case No. 92/92 by which the petitioner Churamani has been convicted under section 436/34 of the Indian Penal Code and sentenced to undergo one year's rigorous imprisonment. The other coaccused namely Jiwanbai, Budhiyarin and Poosmati were also convicted for the said offence but they were sentenced to imprisonment till rising of the Court and in addition to that each one of them have been sentenced to pay a fine of Rs.1000/-, in default of payment of fine amount to undergo 6 months R.I. Against this conviction and sentence only appellant has filed this petition.

2. Learned counsel for the petitioner requested that this 'Criminal Revision' should be treated as 'Criminal Appeal' against the above judgment. The

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request being reasonable is accepted and this petition is converted to 'Criminal Appeal'.

3. The relevant facts in brief for disposal of this criminal appeal are that on 17th November, 1991 one Rameshwer , brother of complainant Jaleshwer brought Ashwani Bai @ Ishmat Bai D/o Ram Sahai to the residence of his brother Jaleshwer and requested him to allow her to reside in the house. When Jaleshwer refused to accede the request, Ram Sahai (father of the girl) quarreled with Jaleshwer, threatened him that he will set his house on fire and went to lodge report in Patharia police station. When Ram Sahai left the place, after 1-2 hours at about 12 p.m. wife of Ram Sahai namely Jivanbai, daughter –Poosmani, son- Churanmani and daughter- Budhiyarin Bai came with stone, hay and matchbox and started abusing Jaleshwer in front of his house. Looking to this Jaleshwer went into his house along with his wife and closed the door of the house. At that time Jagdish (P.W.3), brother-in-law of Jaleshwer reached the house and saw that the accused persons mentioned above were standing there and said that they set the western part of the house of Jaleshwer on fire. In spite of Jagdish asked them not to do this but they did not agree to his request and set the house on fire. Then Jagdish shouted and called Jaleshwer and his wife Dwarika Bai. On hearing the shouting of Jagdish they came out and started shouting on that other persons came on the seen and they extinguished the fire. By this fire property worth Rs. 100-150 was burnt. Jaleshwer went to Pandaria police station and submitted report Ex.P/1 thereafter. On the basis of this written report the police registered the case and started investigation.

4. After investigation the police filed charge-sheet against the accused persons Jiwan Bai, Churnmani, Budhiyarin and Poosmati for commission of the offence punishable under section 436/34 of the Indian Penal Code.

5. After hearing the arguments learned Additional Sessions Judge framed charges against the accused persons for the aforesaid offence. All the accused persons denied the charges. He recorded the statements of the six

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prosecution witnesses and thereafter the statements of accused persons under section 313 of the Criminal Procedure Code were recorded. However the accused did not adduce any evidence in their defence. After hearing the arguments of learned counsel for the accused persons and Public Prosecutor learned Additional Sessions Judge passed the impugned Judgment.

6. Arguments of Shri M.L.Postore, learned counsel for the appellant and Miss Sharmila Singhai, learned Deputy Govt. Advocate for the State heard.

7. Learned counsel for the appellant argued that there are major contradictions in the statements of the prosecution witnesses. Jagdish (P.W.3) is the only eye witness, he is a chance witness. More over he is brother in law of Jaleshwer therefore, he is an interested witness. He is not the resident of village-Chilfi, he resides in other village. His statements are not corroborated by the other witnesses in material particulars. In para-4 of his statement he has stated that other persons are also residing in locality but no one has been examined by the prosecution. Govind (P.W.4) has stated that by the time he reached to the seen of occurrence the fire was already extinguished and nobody was there. Therefore prosecution has not been able to prove the offence against the appellant.

8. At the end of his arguments learned counsel for the appellant requested that in any case if the offence is found to be proved then the accused has already undergone one month imprisonment and the property worth Rs. 100 – 150 has been burnt, therefore it is in the interest of justice that the accused may be punished to the sentence he has already undergone.

9. On the other hand learned Deputy Govt. Advocate argued that Ram Sahai, husband of accused Jiwan Bai and father of other accused, threatened Jaleshwer that he will see that his house is set on fire, when he refused to permit his daughter to reside in his house. Immediately thereafter the accused-appellant along with other accused persons came on the scene and as the prosecution witness No.3 Jagdish has stated that the accused

Churanmani was having matchbox in his hand to whom Jagdish requested not to set the house on fire even then he put the house on fire, therefore the judgment of the learned trial Court is correct. There is no infirmity in the judgment therefore there is no merit in this appeal.

10. After hearing the arguments of learned counsel for the parties I have gone through the evidence available on the file of the trial Court and the judgment of the trial Court. It is true that Jagdish (P.W.3) is brother-in-law of the complainant Jaleshwer. He resides in Sahespur village, his evidence cannot be discarded only on the ground that being a relative he is an interested witness and he resides in some other village, therefore he is a chance witness. However, while scrutinizing the statements of Jagdish (P.W.3) with the statements of other witnesses a care has to be taken about these factors. Jagdish (P.W.3) has very clearly stated that on the date of occurrence he came to village-Chilfi from his village- Sahaspur. He came to his sister's house in village-Clhilfi, he saw that accused Jiwan Bai was having hay, Churanmani having match box, Kushmin Bai and Budhiyarin Bai were having stones in their hands. Seeing this I asked them what are you doing, on this Jeewan Bai inserted hay in his sister's house and accused Churnamani set the hay on fire by lighting matchbox. When he asked them not to do this they started abusing him and on seeing this he started shouting and called his brother-in-law and sister. On hearing his shouting his brother-in-law and sister came out from the house and other persons of the village also gathered there. I, Kainja, Banshi, Govind and others extinguished the fire. A part of the western side of house was burnt. Thereafter his brother-in-law went to lodge the report in the police station. It is true that only Jagdish (P.W.3) has stated that he saw Churanmani setting the house on fire. If we look at the statement of Jaleshwer (P.W.1) he has very clearly stated in his statement that Rameshwer is his brother. Round about a year back his brother sold his half an acre land and wanted to go to Delhi because he is declared a vagabond (criminal under police surveillance). At that time in order to take money, Ram Sahai persuaded

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his brother Rameshwer to marry his daughter Ashwani Bai and he took money from his brother. When he heard about this, he asked Ram Sahai why he has done this. 15-20 days thereafter one day at 9 a.m. his brother Rameshwer came along with Ashwani Bai, daughter of Ram Sahai and asked me to keep Ashwani Bai with us. Then I replied that you have eaten away your share why should I keep Ashwani Bai at my house. On this Ram Sahai asked me that you must keep his daughter at your house or/otherwise your house will be set on fire. After saying it, Ram Sahai left the seen with Kotwar –Jagna to lodge the report in Pandaria police station. Round about 12 O'clock in the mid-day five persons came to his house and they started abusing me and my wife and said that they will set my house on fire. Jiwan Bai was having hay in her hand whereas Churanmani was having matchbox in his hand, Budhiyarin by and Poosmati were having stones. When they started abusing, in order to avoid the situation he along with his wife went into the house and closed the door. Thereafter his brother-in-law Jagdish came on site and he said that accused persons have set his house on fire and he saw the western corner of his house was burning and all the five accused persons were standing there. Dwarika Bai (P.W.2) has also supported the statement of her husband and said that Ram Sahai asked them to keep his daughter in your residence, when they refused, he started abusing. Thereafter Ram Sahai went to lodge report at police station-Pandaria. After sometime Jagdish shouted that the accused persons have set our house on fire, on this she and her husband came out and saw the accused persons standing near their house. Govind (P.W.4) has said that he is resident of the same village i.e. Chilfi. His house is at a minimum distance from the house of the complainant Jaleshwer. He stated that a year back Jaleshwer came to his house and informed that his house has been set on fire by the accused persons. When he came on the spot he saw that one corner of the house was burnt and Jaleshwer informed him that the accused persons have set his house on fire. Shiv Sahai (P.W.5) who is Patwari of that village stated that on the request of the Sub-

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Inspector he prepared the sight map (Ex.P/2). R. K. Diwedi (P.W.6) has also stated that on receiving the report Ex.P/1 from Jaleshwer the case was registered, he went on the spot and recovered a half burnt log(जली हुई लकडी) through memo Ex.P/5, he recorded the statement and got prepared the sight map (Ex.P/2) by the Patwari.

11. If we look at these statements, even the counsel for the appellant has not disputed the fact of burning of the part of house of the complainant Jaleshwer.

12. Now coming to the question of setting the house of complainant on fire, if we look at the evidence adduced by the prosecution to prove the charge against accused appellant along with other accused persons, the above evidence goes to show that Churanmani the accused/appellant was the person who set the house (chapper) on fire and Jagdish (P.W.3) saw him personally and there is no reason why Jaleshwer viz. complainant unnecessarily implicate Churanmani and other accused persons in a criminal case without any rhyme and reason, and particularly immediately before the house was set on fire Ram Sahai the father of accused/appellant threatened the complainant that he will see that his house is set on fire. This fact itself shows that the house was set on fire by the applicant; as such there is no substance in the arguments of learned counsel for the appellant.

13. The prosecution has been able to prove the charges beyond all reasonable doubts that the accused Churanmani along with others set the house (Chapper) of the complainant –Jaleshwer on fire and caused damage to the property. As such the offence under section 436/34 against the appellant Churanmani has been proved by the prosecution. The finding of the learned trial Court on this count is correct.

14. As far as the question of not producing other neighbouring witnesses is concerned, it is not necessary to examine number of witnesses. It is common knowledge that in such a dispute nobody wants to come forward

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to depose against anyone particularly when there is a personal dispute between the villagers. The statements of prosecution witnesses No. 1 to 5 are sufficient to prove the offence against the appellant.

15. In view of the above I am of the opinion that the decision of the trial Court is correct, there is no infirmity in the judgment passed by the trial Court and the accused Churanmani has been rightly held guilty for commission of the offence under section 436/34 of the I.P.C.

16. However on the question of sentence imposed on the appellant by the trial Court is concerned the arguments of learned counsel of the appellant that the appellant has already remained in jail for one month, the incident is of the year 1991 as such 11 years have elapsed, other coaccused have been awarded sentence only up to rising of the Court and fine of one thousand rupees on each accused, and that the accused/appellant has already suffered a lot during trial and appeal. The appellant remained in custody from 25.11.1991 to 19.12.1991.

17. In view of the above discussion this appeal is partly allowed. While maintaining the judgment and order of conviction passed by the trial Court I reduce the sentence of imprisonment from one year's R.I. to the sentence already undergone by the appellant and in addition to this impose a fine of Rs. 1000/-. In default of payment of fine amount the appellant shall undergo one month's S. I. The amount of fine shall be deposited within a period of one month from today.

Sd/-
L.C.BHADOO
Judge